

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AMEREN ILLINOIS COMPANY)	
)	Docket No. 11-0279
Proposed general increase in electric delivery)	
service rates.)	
)	(Cons.)
)	
AMEREN ILLINOIS COMPANY)	
)	Docket No. 11-0282
Proposed general increase in gas delivery service)	
rates.)	

**RESPONSE OF THE PEOPLE OF THE STATE OF ILLINOIS
AND THE CITIZENS UTILITY BOARD TO AMEREN’S MOTION TO
WITHDRAW ELECTRIC TARIFF SHEETS AND SEVER AND TERMINATE
DOCKET No. 11-0279**

The People of the State of Illinois (“the People” or “AG”), by and through Lisa Madigan, Attorney General of the State of Illinois, and the Citizens Utility Board (“CUB”), pursuant to 83 Ill. Adm. Code Sec. 200.190 and the November 10, 2011 ruling of the Administrative Law Judges, hereby provide their Response to the Ameren Illinois Company’s (“Ameren” or “AIC”) Motion to Withdraw Electric Tariff Sheets and Sever and Terminate Docket No. 11-0279 (“Motion”). Ameren’s Motion should be denied. The Illinois Commerce Commission (“ICC” or “the Commission”), its Staff and intervening parties have invested over ten months into the current proceeding, which has resulted in a Proposed Order finding that Ameren’s rates for its electric delivery services are unreasonably high. The Commission is not required to let Ameren withdraw its request for a review of its delivery services rates, and nothing in Senate Bill 1652, enacted into law as Public Act 97-066, changes that. In support of this Response, the AG/CUB state as follows:

1. Ameren’s Motion provides an accurate chronology of this case prior to the enactment of P.A. 97-066, and the legislative history of SB 1652. Ameren also correctly states that House Bill 3036, if it were to become law, would amend P.A. 97-066 by imposing the following condition upon a “participating utility

In the event the participating utility, prior to the effective date of this amendatory Act of the 97th General Assembly, filed electric delivery services tariffs with the Commission pursuant to Section 9-201 of this Act that are related to the recovery of its electric delivery services costs that are still pending on the effective date of this amendatory Act of the 97th General Assembly, the participating utility **shall, at the time it files its performance-based formula rate tariff with the Commission, also file a notice of withdrawal with the Commission** to withdraw the electric delivery services tariffs previously filed pursuant to Section 9-201 of this Act. Upon receipt of such notice, the Commission shall dismiss with prejudice any docket that had been initiated to investigate the electric delivery services tariffs filed pursuant to Section 9-201 of this Act, and such tariffs and the record related thereto shall not be the subject of any further hearing, investigation, or proceeding of any kind related to rates for electric delivery service.

HB 3036 Enrolled at 30 (emphasis added).

2. Ameren states that it “intends to file PBR tariffs pursuant to the provisions of SB 1652, irrespective of whether HB 3036 becomes law.” Motion at 4, ¶13. For that reason, Ameren believes “[t]he Commission should not wait to dismiss the docket until HB 3036 becomes law and the Commission is expressly mandated to do so.” *Id.* at ¶14.

3. AIC is not mandated to withdraw, nor is the Commission mandated to grant withdrawal, of this case until and unless AIC files a performance-based formula rate tariff with the Commission. HB 3036 provides that a participating utility shall withdraw any pending electric delivery services tariffs filed pursuant to Public Utility Act Section 9-201, 220 ILCS 5/9-201. A “participating utility” is one which has filed a performance-based formula rate tariff and one which has agreed to undertake “the infrastructure

investment program” described in P.A. 97-066. 220 ILCS 5/16-108.5(b). Ameren’s Motion proposes to withdraw its electric service delivery tariffs *before* filing its PBR tariffs. Since HB 3036 states a utility’s withdrawal of delivery service tariffs should occur “at the same time it files its performance-based formula rate tariff,” Ameren’s Motion asks the Commission to approve a process not provided for in the applicable statute. HB 3036 Enrolled at 30.

4. While the Commission has yet to issue its final decision in this case, the Proposed Order found that the record evidence supported a finding that Ameren had generated operating income in excess of fair and reasonable rates for in two of its three rate zones. The Proposed Order recommends that electric delivery service rates should decrease in both rate zones -- by \$11.633 million or 4.79% in rate zone 1 and by \$38.478 or 8% for rate zone 3 respectively. Proposed Order at 271 and 272 (November 15, 2011). There is ample evidence regarding the possibility that ratepayers are already paying more than is fair – and that unfairness will persist until any performance-based formula rate tariffs are approved for Ameren. Given the uncertainty regarding if and when any such rates will go into effect, Ameren’s ratepayers should not be forced to pay excessive charges for any period of time. In the interests of fairness, the Motion should be denied.

5. Ameren cites cases in which the Commission has permitted utilities to withdraw tariff sheets and terminate proceedings. Motion at 4-5, ¶15. The Commission, however, has the right to deny withdrawal of a tariff.

As a general matter, there is no rule, regulation, or statute that grants [Illinois American Water Company or “IAWC”] absolute right to withdraw its amended petition or voluntarily dismiss this docket at any time prior to a Commission ruling on its amended petition. It is within the Commission’s discretion to allow a party to voluntarily dismiss or withdraw a petition. (See, *Gibrick v. Skolnik*, 254 Ill. App. 3d 970, 627

N.E.2d 76 (1st Dist. 1993)) Moreover, a trial court should not be free to grant a dismissal where its sole purpose would be to avert an unfavorable decision. (*Gibrick*, 254 Ill. App. 3d at 975, 627 N.E.2d at 79) ...

Additionally, the Commission observes that this matter has been fully litigated over a 13-month period of time. The Commission is mindful that the ALJ, Staff, CUB, and the AG, collectively, have spent valuable time and resources analyzing the issues, proffering testimony and conducting full evidentiary hearings regarding the issues presented pursuant to IAWC's filing of the instant petition. A complete record has been established upon which the Commission can deliberate and make its decision. For the aforementioned reasons, the Commission denies IAWC's Motion to Withdraw.

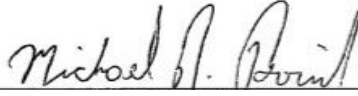
In Re Illinois American Water Company, ICC Docket No. 02-0517, Order on Reopening at 2 (Sept. 16, 2003).

The parties to this case have also invested valuable time and resources analyzing the issues during this ten-month litigated proceeding, including proffering testimony and conducting a full evidentiary hearings regarding the issues presented pursuant to Ameren's electric delivery service filing under Docket No. 11-0279. A complete record has been established upon which the Commission can deliberate and make its decision and this process should not be pre-empted prematurely.

WHEREFORE, the People of the State of Illinois, by and through the Illinois Attorney General, Lisa Madigan, and the Citizens Utility Board respectfully request that the Motion be denied for the reasons described above and such other relief as deemed necessary.

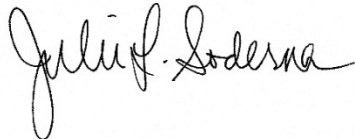
Respectfully submitted,

People of the State of Illinois
By Lisa Madigan, Attorney General



Janice Dale, Chief, Public Utilities Bureau
Michael R. Borovik, Assistant Attorney General
Cathy Yu, Assistant Attorney General
Public Utilities Bureau
Illinois Attorney General's Office
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601
Telephone: (312) 814-7203
Facsimile: (312) 814-3212
jdale@atg.state.il.us
mborovik@atg.state.il.us

Citizens Utility Board



Julie Soderna, Director of Litigation
Kristin Munsch, Attorney
Christie Hicks, Attorney
Citizens Utility Board
309 W. Washington St., Ste. 800
Chicago, IL 60606

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